

October 19, 2001

D.T.E. 99-115

Petition of Fitchburg Gas and Electric Light Company for Approval to Defer Costs Related to the Company's Performance-Based Rate Plan.

APPEARANCES:

Patricia M. French, Esq.
LeBoeuf, Lamb, Greene & MacRae, LLP
260 Franklin Street
Boston, MA 02110
FOR: FITCHBURG GAS AND
ELECTRIC LIGHT COMPANY
Petitioner

Thomas F. Reilly, Attorney General
By: Joseph Rogers
Assistant Attorney General
200 Portland Street
Boston, MA 02114
Intervenor

John Cope-Flanagan, Esq.
NSTAR Services Company
800 Boylston Street
Boston, MA 02199-8003
FOR: COMMONWEALTH GAS COMPANY
Limited Participant

I. INTRODUCTION

On December 29, 1999, Fitchburg Gas and Electric Light Company (“Fitchburg” or “Company”) filed a petition (“Petition”) with the Department of Telecommunications and Energy (“Department”) requesting approval to defer expenses associated with the preparation of a performance-based rate plan (“PBR”) filing for its gas division and its participation in the Department’s PBR investigation in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001). The Company requested deferral of approximately \$100,000 in PBR expenses until the Department determines the appropriate ratemaking treatment in the Company’s next general rate proceeding (Petition at 4).¹

On June 15, 2000, pursuant to G.L. c. 12, § 11E, the Attorney General of the Commonwealth (“Attorney General”) filed a notice of intervention in this proceeding. On June 30, 2000, Commonwealth Gas Company filed a petition requesting limited participant status pursuant to 220 C.M.R. § 1.03. Both petitions were granted. A public hearing was held on July 10, 2000. Fitchburg submitted its initial brief on September 8, 2000, and the Attorney General submitted his initial brief on September 11, 2000. The Company submitted a reply brief on September 15, 2000.²

¹ Approving deferral of an expense allows a company to request recovery for that expense in the company’s next rate case even though that expense was incurred before the test year chosen by the company.

² The Attorney General did not file a reply brief.

II. POSITIONS OF THE PARTIES

A. The Company

The Company states that it incurred the costs at issue complying with the Department's directive to file a PBR by November 1999 (Company Initial Brief at 2, citing Fitchburg Gas and Electric Light Company, D.T.E. 98-51 at 5-7 (1998)). The Company states that, while it was in the process of preparing its PBR filing, the Department issued an Order instituting a generic inquiry into PBR standards (id. citing D.T.E. 99-84 (2000)). Fitchburg states that it was directed not to make a PBR filing until the Department concluded its generic investigation (id. citing D.T.E. 99-84, at 41).

Fitchburg has incurred approximately \$96,670 in costs to prepare its PBR filings beginning in 1999 and has incurred approximately \$19,911 in costs in order to respond to the Department's generic investigation in D.T.E. 99-84 (Exh. DTE 1-4). The Company argues that the costs at issue are extraordinary (Company Initial Brief at 5; Company Reply Brief at 3). The Company states that these costs represent approximately ten percent of the Company's annual gas operating income (Company Initial Brief at 6, citing Exh. DTE-1-1). Therefore, the Company maintains that a Department denial of the request for deferral would significantly harm the overall financial condition of the Company (Company Reply Brief at 2). Fitchburg claims that if the Department denies the Company's request for deferral, the level of these costs are sufficient to trigger a rate case filing by the Company (Company Initial Brief at 6; Company Reply Brief at 1).

In addition, the Company claims its request is consistent with the Department's deferral standard due to the infrequency of its rate increases and deferral requests (Company Initial Brief at 6). Further, the Company claims that its ability to choose a test year has been restricted by the Department's generic PBR proceeding (id. at 7). The Company argues that despite incurring these costs over an extended period of time, it cannot seek recovery of these costs until D.T.E. 99-84 is finalized (id. at 6).³ The Company also claims that it has been unable to earn the return permitted under its established rates in D.T.E. 98-51, partly due to the costs at issue in this proceeding (id. at 7). Were the Department to grant a deferral, Fitchburg states that the Department would still have the ability to review the level of these expenses in order to ensure that such costs were justified (id. at 8).

B. The Attorney General

The Attorney General argues that the costs in question do not meet the Department's standard of review for deferrals for the following reasons: 1) they are not extraordinary; 2) the denial of the request will not harm the Company financially; and 3) the denial of the deferral of these costs is not likely to cause the Company to file a rate case (Attorney General Brief at 3). The Attorney General argues that the expenses at issue are non-extraordinary regulatory compliance costs (id.). Since these costs do not meet the Department's standard on deferrals, the Attorney General states that the Department should deny the Company's request (id.).

³ On June 29, 2001, the Department issued an Order in D.T.E. 99-84. As part of that Order, Fitchburg was directed to file, within three months of the date of the Order, a service quality plan that complies with the guidelines established in D.T.E. 99-84.

III. STANDARD OF REVIEW

The Department formulated its standard for reviewing requests for deferral accounting treatment in North Attleboro Gas Company, D.P.U. 93-229 (1994). In that case, the Department stated that a utility seeking deferral treatment must demonstrate prima facia in its petition that: (1) based on Department precedent, the annual expense⁴ may be recoverable as an extraordinary expense if it were incurred during a test year; (2) a Department denial of the request for deferral would significantly harm the overall financial condition of the company; and (3) the Department's denial of the request for deferral is likely to cause the filing of a rate case that would include in its test year the expense for which deferral is sought. Id. at 7.

The Department's review of a complete petition must strike a balance between historical ratemaking principles which employ the test year method to determine a representative level of expenses, and administrative efficiency which might be achieved by avoiding either single-issue rate cases or rate cases precipitated by an extraordinary expense which may be recoverable if incurred in a test year. Thus, once a prima facia showing is made, the Department will evaluate the petition, considering such additional factors as: (a) the company's ability to choose a test year; (b) the company's history and frequency of rate increases; (c) the company's frequency of requests for deferral; (d) the company's earnings in the year the subject expense was incurred; and (e) whether some voluntary agreement on the part of the petitioner (e.g., a settlement) would otherwise preclude bringing a G.L. c. 164,

⁴ For example, the company's request for deferral would be evaluated in terms of what would constitute an annualized amount. North Attleboro Gas Company, D.P.U. 93-229, at 7 n.9.

§ 94 petition during the period for which deferral is sought. Id. at 7-8. Granting a deferral pursuant to this standard would not constitute a guarantee that the subject expense would be recoverable in a future rate case. Rather, subsequent ratemaking treatment of the expense would be considered in the company's next rate case. Id. at 8.

IV. ANALYSIS AND FINDINGS

Fitchburg seeks to defer approximately \$96,670 in costs to prepare its PBR filings and approximately \$19,911 in costs in order to respond to the Department's generic investigation in D.T.E. 99-84. For deferral for future recovery, we must determine whether the expense meets the Department precedent as a nonrecurring and extraordinary expense if it were incurred during a test year. D.P.U. 93-229, at 7 (1994).

The expenses at issue represent a nonrecurring expense. Nonrecurring expenses incurred in the test year are ineligible for inclusion in the cost of service unless it is demonstrated that they are so extraordinary in nature and amount as to warrant their collection by amortizing them over a period of time. Fitchburg Gas and Electric Light Company, D.P.U. 1270/1414, at 33 (1983). In 1999, Fitchburg had a net gas operating income⁵ of \$1,586,096 on gas revenues of \$18,116,479 (Exh. DTE-1-3 Supp.). Although the Company's PBR costs represent an additional expense, the level of costs of \$116,581 does not represent an extraordinary amount meeting the standard for deferring such costs. In view of the Company's

⁵ Operating income consists of income after expenses, depreciation, and taxes, but does not include interest expense as a deduction (Exh. AG-1-2 (1999 Annual Return to the Department) at 10).

gas revenues of \$18,116,479 and net gas operating income of \$1,586,096, the Department finds that the \$116,581 in PBR costs are not extraordinary in nature or amount.

Because the Company's PBR costs are not extraordinary in nature or amount, Fitchburg's request fails to satisfy the first part of the North Attleboro standard. Moreover, in view of the small amount of costs at issue, the Department concludes that a denial of the request would neither significantly harm the overall financial condition of the Company, or trigger the filing of a rate case by Fitchburg.

In addition, we are not convinced that the Company's selection of a test year was limited by our generic PBR proceeding. In Incentive Regulation, D.P.U. 94-158 (1995), the Department encouraged all jurisdictional gas and electric utilities to immediately devise and propose a PBR plan for approval by the Department. Id. at 65. A utility not filing a PBR proposal was required to explain, in its next base-rate case, the reasons for not submitting a PBR proposal. Id. In Fitchburg's first gas base rate case following Incentive Regulation, the Company failed to file a PBR proposal or provide a detailed justification for not filing such a plan. Fitchburg Gas and Electric Light Company, D.T.E. 98-51 at 5-6 (1998). As a result, the Department ordered the Company to file a PBR proposal within one year. Id. at 7. Thereafter, the Department opened a generic inquiry for PBR standards. Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84, Notice of Inquiry/Generic Proceeding (October 29, 1999). Because the generic proceeding was to investigate common service quality standards for all companies, the

Department instructed Fitchburg not to make its PBR filing until three months after the date of the Final Order in D.T.E. 99-84. Id. at 6.

While Fitchburg may have incurred costs preparing a PBR in response to Department directives in D.T.E. 98-51, which was later put on hold by the Department's generic PBR standards proceeding in D.T.E. 99-84, these expenses are the direct result of Fitchburg's failure to follow the Department's earlier directives on incentive regulations in D.P.U. 94-158. If Fitchburg had properly addressed the PBR requirement when it filed its gas base rate case in D.T.E. 98-51, the Company would not be in the situation today of seeking a deferral. For the above reasons, the Department finds that the Company's petition fails to meet the requirements of the North Attleboro standard. Accordingly, the Company's deferral request is denied.

VI. ORDER

Accordingly, after notice, hearing and due consideration, it is

ORDERED: That the petition of Fitchburg Gas and Electric Light Company for approval of deferral accounting treatment related to the preparation of a performance-based rate plan filing for its gas division and its participation in the PBR proceedings is DENIED.

By Order of the Department,

James Connelly, Chairman

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Eugene J. Sullivan, Jr. Commissioner

Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).